

REMARKS

Claims 2-8 are pending in the application. Claim 1 has been canceled. Claim 2 has been amended.

In the Office Action, the abstract has been objected to as being too lengthy (i.e., greater than 150 words). A new abstract is submitted herewith which is believed to fully address the Examiner's concerns.

Claims 1-4 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,185,451 (Richardson). Claims 5-8 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Richardson in view of U.S. Patent No. 4,688,581 (Moss). These rejections are respectfully traversed. Applicants hereby request reconsideration and allowance of the claims in view of the following arguments.

Regarding the anticipation rejection of independent claim 1 based on Richardson, this rejection is moot, since claim 1 has been cancelled.

Regarding the anticipation rejection of independent claims 2 and 3 based on Richardson, claim 2 has been amended to delete the phrase "or electromyogram" to clarify that the claimed invention is directed toward a muscle measuring device using a mechanomyogram. As explained at the paragraph bridging pages 10 and 11 of the present application, electromyograms and mechanomyograms are completely different from each other. An electromyogram is a waveform produced by overlapping of the action potentials of muscle fibers, while a mechanomyogram represents vibrations caused by contraction of the muscle upon receipt of action potentials. The present invention, as reflected in amended independent claim 2 and in independent claim 3, is directed towards a device that uses mechanomyograms.

The cited Richardson reference discloses an apparatus that uses an electromyogram. However, despite contentions to the contrary at paragraph 5 of the Office Action, Richardson does not teach or even suggest an apparatus using a mechanomyogram. Richardson teaches an “EMG (electromyographic) unit 3”. The term “EMG” is used throughout the specification and drawings of Richardson. Thus, Richardson does not disclose claim 2’s recited muscle data measuring unit that measures a mechanomyogram, or its determining unit that measures a mechanomyogram and then determines muscle proportions based on a frequency analysis of the measured mechanomyogram. Likewise, Richardson does not disclose claim 3’s recited mechanomyogram measuring unit, or its determining unit that measures a mechanomyogram and then determines muscle proportions based on the inflection points of amplitude data of the measured mechanomyogram.

Thus, Richardson does not anticipate independent claims 2 or 3, because it does not disclose each and every element of those claims. In particular, Richardson does not disclose the muscle data measuring unit and the determining unit of claim 2, or the mechanomyogram measuring unit or the determining unit of claim 3. Moreover, it would not have been obvious to modify the apparatus of Richardson to include the measuring units or determining units of claims 2 or 3.

Consequently, independent claims 2 and 3 are patentable, as is claim 4, which depends from claim 2 or 3.

Regarding the obviousness rejection of claims 5-8 based on Richardson and Moss, the Moss reference does not disclose or suggest an apparatus using a mechanomyogram. Like Richardson, Moss discloses using an electromyogram. Thus, Moss does not furnish the features of independent claims 2 and 3, from which claims 5-8 depend, missing from Richardson.

Application No.: 10/684,680

Therefore, any combination of Richardson and Moss would be missing the claimed muscle data measuring unit and the determining unit of claim 2, and the mechanomyogram measuring unit and the determining unit of claim 3, and it would not have been obvious to add these features to any Richardson/Moss combination.

Consequently, claims 5-8 are patentable.

Accordingly, it is believed that all pending claims are now in condition for allowance. Applicants therefore respectfully request an early and favorable reconsideration and allowance of this application. If there are any outstanding issues which might be resolved by an interview or an Examiner's amendment, the Examiner is invited to call Applicants' representative at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Michael A. Messina

Registration No. 33,424

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 MAM:llg
Facsimile: 202.756.8087
Date: June 9, 2006

**Please recognize our Customer No. 20277
as our correspondence address.**